

IN THE SUPREME COURT OF SEYCHELLES

BANK OF BARODA

PLAINTIFF

VERSUS

1. **MR. G. NARAYARANA SAMY PILLAY**

2. **MR. G. ELAN GOVAN PILLAY**

DEFENDANTS

Civil Side No 150 of 1996

Mr. Shah for the plaintiff

Mr. F. Ally for the defendant

JUDGMENT

B. Renaud

The Plaintiff is a Bank operating in Seychelles. It entered into an agreement with the Defendants on 22nd June 1987 in terms of which the Plaintiff undertook to lend and advance moneys to the Defendants on a bank overdraft account. The agreement had the following terms:

- (a) the Plaintiff would honour Defendants' cheques and other instructions up to the overdraft limit agreed from time to time;
- (b) the Plaintiff would be entitled to charge Defendants with interest, compounded monthly on the daily balance owing by Defendants from time to time at the current bank overdraft interest rates prevailing from time to time, which for the relevant period of the class of overdraft was 17% per annum;
- (c) the Plaintiff would be entitled to debit the defendants'

overdraft account with advances, bank charges, interest and other charges in accordance with ordinary banking practice;

- (d) the balance on the overdraft account would be payable on demand.

The overdraft limit was increased to SR40,000.00 on 23rd December 1988 and further increased to SR60,000.00 on 23rd November 1989.

The Plaintiff filed its plaint on 29th May, 1996 claiming SR100,904.22 being the balance of the bank overdraft outstanding as at 31st March 1996, after the Defendants having, despite demands, failed to pay the said balance.

In its Statement of Defence the Defendants raised a plea in *limine litis* on the ground that the action of Plaintiff is prescribed under article 2271 of the Civil Code of Seychelles. The Defendants, however, later abandoned that plea.

The only contentious issue raised by the Defendants in their statement of defence on the merits, was to the effect that they owe the Plaintiff only SR30,000.00 and not the amount claimed by the Plaintiff. The Defendants submitted to judgment in that amount only. An interim judgment in the amount of SR30,000.00 was accordingly entered against the Defendants on 5th May, 1997.

The parties agreed to undertake further negotiations regarding the difference and would come to Court if no amicable settlement between the parties is reached. Having failed to reach a settlement the matter came before court again on 30th May 2000 when the parties once again asked for more time to have the matter settled amicably. Having failed to do so the matter was finally set for hearing on 1st October 2004.

On the day of the hearing neither the Defendants nor their Counsel appeared. Counsel

for the Plaintiff moved the Court for leave to hear the matter *ex-parte*. Leave was accordingly granted for the matter to be heard *ex-parte* in terms of Section 133 read with Section 65 of the Seychelles Code of Civil Procedure.

It is in evidence that the Defendants held current accounts with the Plaintiff. The Defendants had overdraft facility with the Plaintiff since 1987. The overdraft was increased to SR40,000.00 in 1988 and further increased to SR60,000.00 in 1989. The Bank Statements, Exhibit P1(1) to P1(5), show the position of the account of the Defendants held by the Plaintiff for the period 4th October 1992 to 5th May 1994. On 4th October 1992 the balance of that account stood at SR59,854.12. The account was active showing debits and credits thereto during the period leading up to 5th March 1993 when the balance stood at SR.59,693.59. The Bank Statement further shows that as at 5th February 1994 the account stood at SR70,643.29 having attracted interest averaging over SR900.00 per month. A further statement covering the period 30th November 1994 to 31st March 1996 shows the outstanding balance as SR100,904.02 in view of accrued interest averaging over SR1200.00 per month having been levied on the unpaid balance. Copy of a letter, endorsed "*without prejudice*", from the 2nd Defendant dated 6th July 2001 was admitted and marked as Exhibit P2. Statement of computation of interests from 31st March 1996 was admitted and marked as Exhibit P3.

On the basis of the uncontroverted evidence of the Plaintiff, I am satisfied that the Plaintiff has proved its claim against the Defendants on the balance of probabilities. I accordingly enter judgment in favour of the Plaintiff as against the Defendants jointly and severally in the sum of SR100,904.22 with interest at 10% per annum, and costs.

.....
B.RENAUD

JUDGE

Dated this 29th day of November 2004

